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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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WESTERN DISTRICT OF TEXAS
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ANGEL G. b/n/f VALERIE CROWLEY, *et al.*	§	
Plaintiffs	§	
v.	§	A-99-035-WS
TEXAS EDUCATION AGENCY	§	
Defendant	§	

CONSENT DECREE AND FINAL JUDGMENT

1. HISTORY OF THE LITIGATION

1.1 On January 24, 1994, six students with disabilities residing in residential facilities ("RFs") in Texas, by and through their next friends, filed this lawsuit against the Texas Education Agency ("TEA") alleging that Defendant violated Plaintiffs' rights under the Individuals with Disabilities Education Act, ("IDEA"), 20 U.S.C. §1400 *et seq.*; Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. §794; the Americans with Disabilities Act ("ADA") 42 U.S.C. §12131 *et seq.*; and the Fifth and Fourteenth Amendments of the U.S. Constitution. Defendant denied Plaintiffs' allegations.

1.2 On July 26, 1996, the parties settled Plaintiffs' claims as to TEA's Child-Find and Inter-Agency Agreement obligations for students with disabilities residing in RFs. The remaining issue involved Plaintiffs' allegations concerning the adequacy of TEA's special education monitoring system, as implemented for students residing in RFs.

1.3 In June 2000, the U.S. District Court for the Western District of Texas held an eight-day evidentiary hearing to determine whether TEA had met its legal obligation as the State Education

98

Agency by maintaining a special education monitoring system that both identified and corrected noncompliance by school districts serving students residing in RFs.

1.4 On April 15, 2004, the United States District Court issued a decision concerning the adequacy of TEA's monitoring system for students residing in RFs. Specifically, the Court found that TEA must develop a new monitoring system to ensure that students with disabilities residing in RFs receive a free, appropriate public education ("FAPE").

1.5 On May 17, 2004, TEA filed a Notice of Appeal in the United States Court of Appeals for the Fifth Circuit. During the pendency of this appeal, the parties agreed to the entry of this Consent Decree to resolve the disputes between them and to achieve their common goal of developing and implementing an effective monitoring system that timely identifies and corrects noncompliance with federal and state special education requirements by school districts serving students with disabilities who reside in RFs.

1.6 The parties acknowledge that students with disabilities residing in RFs are a unique and vulnerable population in that they are often separated from their parents/guardians and have little access to family members who can advocate for the educational services they require. Given the absence of involved family members, there is a need to protect the educational rights of RF students through a monitoring system designed to address their unique circumstances.

2. DEFINITIONS and TERMS

As used within this Consent Decree, these terms shall have the following meaning:

2.1 "Benchmarks" means the specified data values that identify a statewide performance goal for each of the RF performance indicators and are designed to improve the statewide performance levels associated with these indicators.

2.2 "Corrective Action Plan" means a plan submitted by a RF district, and approved by TEA, in response to any finding of noncompliance identified during RF monitoring.

2.3 "Performance indicators" means the data variables identified in Paragraph 3.6 of this Consent Decree that are used to identify low-performing RF districts.

2.4 "Performance sub-indicators" means the more detailed data variables identified in Paragraph 3.6 of this Consent Decree that comprise each performance indicator.

2.5 "Residential Facility" or "RF" means a facility housing six or more students with an average length of stay of 30 days or more. An RF does not include traditional foster homes.

2.6 "RF District" means a school district that serves students with disabilities residing in RFs. This term includes charter schools serving RF students.

2.7 "RF Student" means a student with a disability who resides in a "residential facility."

2.8 "Triggers" means the specified data values that identify the parameters of low performance by RF districts, and in turn, result in on-site monitoring for low performance districts.

3. DEVELOPMENT OF TEA'S RF MONITORING SYSTEM DURING THE 2005-2006 SCHOOL YEAR

3.1 The parties agree that TEA is legally required to have a monitoring system that ensures that eligible students with disabilities residing in RFs receive FAPE in the least restrictive environment ("LRE"). Therefore, TEA has agreed to conduct numerous monitoring activities, beginning in the 2005-2006 school year and continuing through the 2009-2010 school year.

3.2 By September 30, 2005, TEA will determine the number of RF students eligible for special education services by identifying both the total number of RF students, and the number of RF students in each RF district.

3.3 By September 30, 2005, TEA also will:

(a) identify all school districts, including charter schools, serving RF students;

(b) identify all RF districts in which any RF students are educated at the RF facility;

(c) identify all RF districts in which any RF students are educated in school district settings with only other RF students; and

(d) categorize all RF districts by size of RF population, i.e., "small RF district" (less than 30 RF students); "medium RF district" (31-80 RF students); and "large RF district" (more than 80 RF students). As described in Paragraphs 4.2 and 5.2, this categorization will be used in the selection process for RF districts receiving random on-site RF monitoring visits and random on-site data verification visits beginning in the 2006-2007 school year.

3.4 Between September 1, 2005 and May 31, 2006, TEA will develop school district and administrative instructional products and professional development materials related to RF monitoring.

3.5 Between October 1, 2005 and January 31, 2006, TEA will develop a separate data collection system for RF students. All RF districts will be required to provide specific data relevant to the performance indicators and sub-indicators described in Paragraph 3.6.

3.6 Development of a separate RF data system may require additional discussion by the parties and subsequent modification of the types of data collected, including both the RF performance indicators and sub-indicators. Any modification of the RF data collection system, however, will be subject to the condition that the system must include the first four performance indicators listed below and may include one or both of the remaining performance indicators, not to exceed six total performance indicators. Additionally, TEA may add no more than 2 sub-indicators for each performance indicator, although by mutual agreement, the parties may substitute different sub-indicators for those listed below. These RF monitoring performance indicators and sub-indicators are as follows:

(a) Least Restrictive Environment ("LRE")

(1) Percentage of RF students in "separate school" settings (e.g., separate campus, or RF setting);

(2) Percentage of RF students in hospital, homebound, and state school settings;

(3) Percentage of RF students in self-contained classes;

(4) Number of RF students moved to more restrictive settings during the school year reflected in the data; and

(5) Number of RF students moved to less restrictive settings during the school year reflected in the data.

(b) Commensurate School Day

(1) Number of minutes in the district's school day for non-disabled, full-time students;

(2) Number of minutes in the school day for each RF student;

(3) Percentage and number of RF students receiving a full school day, as defined in Paragraph 3.6(b)(1);

(4) Percentage and number of RF students receiving more than a half school day but less than a full school day, as defined in Paragraph 3.6(b)(1); and

(5) Percentage and number of RF students receiving less than half of the full school day, as defined in Paragraph 3.6(b)(1).

(c) Extended School Year ("ESY") Services

(1) Percentage and number of RF students receiving ESY services.

(2) Percentage and number of RF students receiving: (i) more than 8 weeks of ESY services; (ii) between 6 and 8 weeks of ESY services; and (iii) less than 6 weeks of ESY services;

(3) Percentage and number of RF students receiving ESY services: (i) 4-5 days per week; (ii) 3 days per week; and (iii) less than 3 days per week;

(4) Percentage and number of RF students receiving ESY services: (i) more than 3 contact hours per day; and (ii) less than 3 contact hours per day;

(5) Percentage and number of RF students receiving: (i) ESY instruction and related services; (ii) ESY instruction only; and (iii) ESY related services only;

(6) Percentage and number of RF students receiving ESY services in each placement option described in Paragraph 3.6(a)(1)-(3).

(d) Certified and Qualified Staff

(1) Number and percentage of teachers, paraprofessionals, and related services personnel providing instructional and/or related services to RF students either in local school districts or at the RF, who are considered highly qualified, qualified/certified, and/or licensed in accordance with NCLB, IDEA 2004, and applicable state licensing and certification requirements.

(e) Rate of Participation in the Texas Assessment of Knowledge and Skills ("TAKS")

(1) Percentage and number of RF students taking the TAKS compared to the percentage and number of non-RF students receiving special education services taking the TAKS;

(2) Percentage and number of RF students by disability category taking the TAKS compared to the number and percentage of non-RF students receiving special education services by disability category taking the TAKS.

(f) Related Services

(1) Number of RF students with orthopedic disabilities, other health impairments, or multiple disabilities;

(2) Number of RF students receiving direct physical and/or occupational therapy services, and for each such student, the number of minutes per day and the number of sessions per week of physical and/or occupational therapy;

(3) Number of RF students with speech/language disabilities;

(4) Number of RF students receiving direct speech therapy, and for each such student, the number of minutes per day and the number of sessions per week of speech therapy;

(5) Number of RF students with emotional/behavioral disabilities, autism, and traumatic brain injury;

(6) Number of RF students receiving direct social work services, psychological services, or school counseling services, and for each such student, the number of minutes per day and the number of sessions per week of these services;

(7) Total number of students with orthopedic disabilities, other health impairments, or multiple disabilities compared to the number of full time equivalent ("F.T.E") physical therapists and the number of F.T.E. occupational therapists, whether employed or contracted.

(8) Total number of students with speech/language disabilities compared to the number of F.T.E. speech therapists, whether employed or contracted.

3.7 All data collection relevant to the performance indicators and sub-indications described in Paragraph 3.6 will be used to rank RF districts. This ranking will be based upon a ten point weighting system that assigns 4 points to the LRE performance indicator and 1.2 to 2.0 points to each other performance indicator (depending on whether the total number of performance indicators is 4, 5, or 6). All sub-indicators must be approximately equal in value.

3.8 No later than January 31, 2006, TEA will notify RF districts that beginning in the 2006-2007 school year and continuing throughout the duration of this Consent Decree, TEA will implement the following system of enforcement proceedings and sanctions for any RF district that fails to make timely and substantial progress toward implementation of a corrective action plan, as required by TEA following an on-site RF monitoring visit:

(a) Six months following the effective date of a RF district's corrective action plan, TEA will publish the district's monitoring report summary and a description of the district's failure to adhere to the corrective action plan in at least one major local newspaper for 2 consecutive days.

(b) Six months following the effective date of a RF district's corrective action plan, TEA will require the RF district to obtain technical assistance through an Education Service Center or a special education consultant to assist with implementation of the corrective action plan. All costs for this technical assistance will be borne by the RF district.

(c) Six months following the effective date of a RF district's corrective action plan, the district's special education director and a regular education administrator designated by the district Superintendent must meet with the Commissioner of Education or his/her designee to review the district's lack of progress in correcting areas of noncompliance and to explain how the corrective action plan will be fully implemented within the twelve month period allowed.

(d) Twelve months following the effective date of a RF district's corrective action plan, TEA will publish a notice in at least one major local newspaper for 2 consecutive days for any RF district that fails to comply with the required corrective action plan. This notice will also state that TEA will appoint a Conservator or Management Team to oversee the RF district's correction of all remaining noncompliance, as identified in the RF monitoring and compliance report. The Conservator or Management Team will have the authority to appoint a special education consultant to assist with correction of all noncompliance. All costs for this assistance will be borne by the RF district.

(e) Failure by a RF district to implement the required corrective action plan within twelve months will also result in additional interventions and sanctions as designated in federal and state law, (IDEA 2004 and TEC, Chapter 39, Subchapter G), and as deemed necessary and appropriate to the circumstances, including state-directed use and/or withholding of federal funds.

3.9 Between February 1, 2006 and May 31, 2006, TEA will conduct on-site visits to a minimum of six RF districts to collect RF data as part of a RF student population/services study. Plaintiffs will designate one attorney to accompany TEA staff on 3 of these visits. Plaintiffs' counsel will be allowed access to both the RFs and the RF school districts to observe and participate in these study visits. Plaintiffs' counsel will assist TEA in developing a framework for interviewing RF staff concerning educational services provided to RF students. Plaintiffs' counsel agree that information learned from these RF study visits will not be used to file any administrative or judicial action against the school districts visited. Plaintiffs' counsel further agree that any information obtained during the study will be "destroyed when no longer needed for the purposes for which the study was conducted." 34 C.F.R.§99.31(a)(6)(ii)(B).

3.10 TEA will develop a set of compliance standards to accompany the RF investigatory questions described in Paragraph 4 .6 of this Consent Decree. TEA will furnish a copy of the draft compliance standards to Plaintiffs' counsel and the parties will meet to finalize these standards by May 31, 2006.

3.11 No later than May 31, 2006, TEA will hire/retain a minimum of 6 additional RF monitoring staff, including a minimum of 3 F.T.E positions assigned to conduct on-site RF monitoring.

3.12 Between May 1, 2006 and June 30, 2006, TEA will train all relevant staff to conduct RF monitoring in a manner consistent with this Consent Decree.

3.13 Between June 1, 2006 and August 31, 2006, TEA will educate relevant staff from the Education Service Centers and from school districts concerning RF monitoring.

4. IMPLEMENTATION OF TEA'S RF MONITORING SYSTEM DURING THE 2006-2007 SCHOOL YEAR

4.1 Between August 1, 2006 and September 30, 2006, TEA will conduct a preliminary data run for all RF districts utilizing the newly developed RF data collection system. Following this data run, TEA will establish "triggers" to ensure selection of the following minimum number of RF districts for on-site monitoring: 17 low-performing visits; 8 random visits; and 5 random data verification visits. TEA will not be obligated to select more than the identified minimum number of RF districts for on-site monitoring. Selection of these RF districts will be complete no later than October 31, 2006.

4.2 RF districts receiving random on-site monitoring visits and random on-site data verification visits will be selected from the "size" categories described in Paragraph 3.3(d) of this Consent Decree. To ensure that various-sized RF districts are monitored, and to ensure that an adequate number of RF students are included in the RF monitoring process, TEA will select the same combined percentage of "medium" and "large" RF districts to receive random monitoring visits as the percentage of "small" districts selected in the low-performing group. For example, if 60% of the RF districts selected in the low-performing group are "small" districts, TEA will ensure that 60%

of the RF districts selected for random on-site monitoring visits or random on-site data verification visits will be randomly drawn from the combined "medium" and "large" categories of RF districts.

4.3 Given the limited number of RF districts receiving low-performing monitoring visits each year, a RF district will not receive low-performing monitoring visits for two consecutive years. An RF district selected to receive a low-performing monitoring visit in a particular school year, however, may receive a random on-site monitoring visit, a random data verification visit, or a corrective action visit in the school year following the low-performing on-site monitoring visit.

4.4 No later than August 30, 2006, TEA will establish benchmarks to reflect a mutually agreed-upon level of annual progress for RF districts statewide (i.e. demonstrating an increase in RF compliance with specified legal requirements). These benchmarks will be annually adjusted upward by a mutually agreed-upon amount to reflect increased compliance by RF districts with the RF Monitoring performance indicators described in Paragraph 3.6 of this Consent Decree.

4.5 The parties will confer on an annual basis near the start of each school year to establish these benchmarks. The parties recognize that it may be of value to establish the benchmarks for a two year period. If the benchmarks are exceeded during the first year, however, TEA will adjust them upward for the second year to ensure continuous improvement and increasing compliance by RF districts statewide.

4.6 Between November 1, 2006 and May 31, 2007, TEA will conduct on-site RF monitoring for selected districts utilizing a set of investigatory questions and compliance standards that are mutually agreed-upon by the parties. These questions will incorporate, among others, the following:

(a) Individual Education Plan ("IEP") Development By a Properly Constituted IEP Committee, Including Trained Surrogate Parents, and Based Upon Current Evaluation Data. Implementation of Same.

(1) Are the admission, review, and dismissal ("ARD") committees properly constituted, including a surrogate parent if needed, according to the requirements of 34 C.F.R. § 300.344?

(2) Are surrogate parents trained in accordance with Texas Education Code, § 29.015 and Texas Administrative Code § 89.1047?

(3) Does the number of RF students assigned to each surrogate parent impact the ability of the surrogate to adequately represent assigned students?

(4) Are parents involved in decision-making as required by 34 C.F.R. § 300.345, even when geographically distant from RF students?

(5) When were the most recent comprehensive evaluations completed for RF students and are evaluation personnel appropriately credentialed/certified?

(6) What current evaluation data exists for RF students? Does this evaluation data provide current information related to the students' identified areas of disability and their present levels of performance?

(7) Are IEPs for RF students implemented as written?

(b) Least Restrictive Environment Requirements

(1) What decision-making framework is used to make placement decisions for RF students?

(2) Under what circumstances are RF students educated together in the same settings, whether on a school district campus or at the RF?

(3) Under what circumstances are RF students placed with non-RF students in self-contained classes or on separate campuses?

(4) Are educational placements for RF students age-appropriate?

(5) Do RF students have access to, and participate in, extra-curricular and co-curricular activities?

(6) Is there evidence that RF students were moved to more restrictive settings upon admission to the RF or during the past 2 years of placement in the RF, absent any objective evidence of a significant change in the students' academic and non-academic performance and were supplementary aids and services, or accommodations and modifications, attempted prior to placement in a more restrictive setting? What were the results of the previous provision of supplementary aids and services, or accommodations and modifications, to these RF students?

(c) Educational Benefit

(1) What educational progress has been made by RF students since placement in the RF (up to a 3 year review)? Is there evidence of progress on academic goals, such as passing grades and advancement from grade to grade or is there evidence of a policy or practice of modified grading systems and social promotion? Is there evidence of progress on behavioral and related service goals, where applicable?

(2) For the RF student who has been in the RF for more than one year, is there evidence that the discrepancies are widening between the RF student's grade/age and his or her academic/functional performance?

(3) Is there any evidence of a lack of progress as demonstrated by the same IEP goals/objectives for RF students over a period of 2-3 years?

(4) Is there any evidence of improved behavior by RF students (e.g., decrease in disciplinary referrals, time-outs, or suspensions, etc.) or evidence of regression in behavior (e.g., increase in disciplinary referrals, time-out, suspensions, etc.)?

(5) Is there any evidence that IEP goals have been revised to reflect a loss of skills or a decrease in scope or mastery?

(6) Is there any evidence of progress on academic, behavioral, and related service goals over the period during which the student has resided in the RF?

(7) Are the IEP goals for RF students aligned with their evaluations and the objectives described in the Texas Essential Knowledge and Skills (TEKS)?

(d) Certified/Qualified Staff

(1) What are the qualifications of instructional personnel, including paraprofessionals, teaching RF students?

(2) What are the qualifications of related services personnel serving RF students?

(e) Commensurate School Day

(1) Is the length of the school day for RF students commensurate with that of non-disabled students?

(2) What is the justification for a reduced school day for RF students? Is the justification individualized based upon the needs of each RF student?

(3) Does the transportation schedule for RF students impact the length of their school day?

(4) Do the class schedules for RF students reflect an amount of instruction that is commensurate with non-disabled students?

(5) Under what circumstances are RF students receiving less instruction than non-disabled students?

(f) Timely and Sufficient Provision of Related Services

(1) What types of related services are provided to RF students and what is the amount, duration, and frequency of these services?

(2) What is the relationship between the related services being provided to RF students and the recommendations for services in their evaluations?

(3) Are RF students receiving direct, individualized related services rather than consultative or group services?

(4) Is there a pattern of RF students receiving consultative rather than direct related services?

(5) Are evaluation practices researched and described?

(6) What are the timelines for evaluating RF students for related services?

(7) What are the timelines for providing related services to RF students?

(8) Where are related services provided to RF students?

(9) Do RF students have access to assistive technology devices and services?

(g) Implementation of Behavior Plans and Disciplinary Practices

(1) Are functional behavior assessments conducted for RF students when needed?

(2) Are behavior improvement plans developed and implemented for RF students who have received functional behavior assessments?

(3) Are RF students receiving counseling as a related service when needed?

(4) Is there a pattern of disciplinary removals for RF students?

(5) Is there evidence that RF students receive less instruction than other students due to disciplinary practices?

(h) Transition Services

(1) Are appropriate participants present at IEP meetings in which transition is discussed for RF students?

(2) Are transition services included in the IEPs for RF students?

(3) Are transition services implemented as identified in the IEPs of RF students?

(4) Do transition services address issues related to RF students transitioning to other living arrangements and other long-term transition goals?

(i) Extended School Year ("ESY") Services

(1) Is there equal consideration of ESY services for RF students, as compared to other students with disabilities?

(2) Is there evidence of a pattern of substantially similar ESY services for RF students (including the amount, duration, and scope of services), as compared to other students with disabilities?

(3) Is there evidence to support the conclusion that there is a one-size-fits-all ESY program for RF students or students with disabilities generally?

(4) Are ESY services provided to RF students in accordance with their IEP goals and objectives?

(5) Did the ARD committee for each RF student determine the LRE for ESY services?

(j) Participation in the Texas Assessment of Knowledge and Skills ("TAKS")

(1) To what extent do RF students participate in TAKS?

(2) What reason(s) is offered as to why RF students do not participate in TAKS?

(3) For RF students exempted from TAKS, is there a relationship between their evaluations, IEPs, and non-participation in TAKS?

(4) Do the IEPs of RF students reflect that they are receiving TEKS instruction?

(5) What is the decision-making framework for assessment determinations?

(6) For students taking the State-Developed Alternative Assessment, how far off grade level are the RF students?

4.7 TEA will issue a RF district monitoring compliance report within 60 calendar days of completion of each low-performing on-site monitoring visit and each random on-site monitoring visit conducted during the 2006-2007 school year.

4.8 TEA will require RF districts subject to low-performing on-site monitoring visits and random on-site monitoring visits to submit a corrective action plan within 45 calendar days of receipt of the monitoring compliance report issued by TEA.

4.9 TEA will review and approve all corrective action plans submitted by RF districts within 30 days of receipt of the plans. Corrective action plans must include measurable criteria to correct all noncompliance and to improve district performance in the areas of noncompliance.

4.10 TEA will require all RF districts subject to on-site monitoring visits to provide copies of the monitoring compliance report and corrective action plan, if any is required, to each board member for the school district. Additionally, TEA will require the RF school district to include discussion of the monitoring compliance report and corrective action plan on the school board's agenda for the next scheduled school board meeting, consistent with the posting requirements of the Open Meetings Act.

4.11 TEA will publish the results of the annual data analysis for RF districts, the findings and results of all on-site RF monitoring activities, and all corrective action plans for RF districts on the state agency web site.

4.12 TEA will engage in follow-along telephone conferences with any RF district that is required to implement a corrective action plan to ensure that progress is made correcting all noncompliance in a timely manner.

4.13 TEA will require RF districts to complete all corrective actions with 12 months of the date of TEA's approval of the district's corrective action plan.

4.14 TEA will implement the system of enforcement proceedings and sanctions described in Paragraph 3.8 for any RF district that fails to make timely and substantial progress toward implementation of a corrective action plan, as required by TEA, following an on-site RF monitoring visit.

5. IMPLEMENTATION OF TEA'S RF MONITORING SYSTEM DURING THE 2007-2008, 2008-2009, and 2009-2010 SCHOOL YEARS

5.1 Between August 1st and September 30th of each school year, TEA will conduct a data run for all RF districts utilizing the RF data collection system. Following this annual data run, TEA will establish triggers to ensure selection of the following minimum number of RF districts for on-site monitoring: 15 low-performing visits; 7 random visits; and 3 random data verification visits. TEA will not be obligated to select more than the identified minimum number of RF districts for on-site monitoring. Selection of these RF districts will be complete no later than October 31st of each school year.

5.2 RF districts receiving random on-site monitoring visits and random on-site data verification visits will be selected from the "size" categories described in Paragraph 3.3(d) of this Consent Decree. To ensure that various-sized RF districts are monitored, and to ensure that an adequate number of RF students are included in the RF monitoring process, TEA will select the same combined percentage of "medium" and "large" RF districts to receive random monitoring visits as the percentage of "small" districts selected in the low-performing group. For example, if 60% of the RF districts selected in the low-performing group are "small" districts, TEA will ensure that 60% of the RF districts selected for random on-site monitoring visits or random on-site data verification visits will be randomly drawn from the combined "medium" and "large" categories of RF districts.

5.3 Given the limited number of RF districts receiving low-performing monitoring visits each year, a RF district will not receive low-performing monitoring visits for two consecutive years. An RF district selected to receive a low-performing monitoring visit in a particular school year, however, may receive a random on-site monitoring visit, a random data verification visit, or a corrective action visit in the school year following the low-performing on-site monitoring visit.

5.4 No later than August 30th of each school year, TEA will establish benchmarks to reflect a mutually agreed-upon level of annual progress for RF districts statewide (i.e., demonstrating an increase in RF compliance with specified legal requirements). These benchmarks will be annually adjusted upward by a mutually agreed- upon amount to reflect increased compliance by RF districts statewide with the RF Monitoring performance indicators described in Paragraph 3.6 of this Consent Decree.

5.5 The parties will confer on an annual basis near the start of each school year to establish these benchmarks. The parties recognize that it may be of value to establish the benchmarks for a two year period. If the benchmarks are exceeded during the first year, however, TEA will adjust them upward for the second year to ensure continuous improvement and increasing compliance by RF districts.

5.6 Between November 1st and May 31st of each school year, TEA will conduct on-site RF monitoring for selected districts utilizing a set of investigatory questions/compliance standards as described in Paragraph 4.6 of this Consent Decree.

5.7 Between September 1st and June 30th of each school year, TEA will conduct on-site corrective action visits to a minimum of 5 RF districts that received any on-site RF monitoring visit in the previous school year and were required to implement a corrective action plan.

5.8 TEA will issue a RF district monitoring and compliance report within 45 calendar days of completion of each low-performing on-site monitoring visit and each random on-site monitoring visit conducted during the school year.

5.9 TEA will require RF districts subject to low-performing on-site monitoring visits and random on-site monitoring visits to submit a corrective action plan within 30 calendar days of receipt of the compliance report issued by TEA.

5.10 TEA will review and approve all corrective action plans submitted by RF districts within 30 days of receipt of the plans. Corrective action plans must include measurable criteria to correct all noncompliance and to improve district performance in the areas of noncompliance.

5.11 TEA will require all RF districts subject to on-site monitoring visits to provide copies of the monitoring report and corrective action plan, if any is required, to each board member for the school district. Additionally, TEA will require the RF school district to include discussion of the monitoring compliance report and corrective action plan on the school board's agenda for the next scheduled school board meeting, consistent with the posting requirements of the Open Meetings Act.

5.12 TEA will publish the results of the annual data analysis for RF districts, the findings and results of all on-site RF monitoring activities, and all corrective action plans for RF districts on the state agency web site.

5.13 TEA will engage in follow-along telephone conferences with any RF districts that is required to implement a corrective action plan to ensure that progress is made correcting all noncompliance in a timely manner.

5.14 TEA will require RF districts to complete all corrective actions with 12 months of the date of TEA's approval of the district's corrective action plan.

5.15 TEA will implement the system of enforcement proceedings and sanctions described in Paragraph 3.8 for any RF district that fails to make timely and substantial progress toward implementation of a corrective action plan, as required by TEA, following an on-site RF monitoring visit.

6. ANNUAL REPORT TO THE COURT

6.1 TEA will file annual reports with the Court beginning in July 2006 and continuing through July 2010. These reports will include information on the current status of all RF monitoring activities conducted during the school year immediately preceding the date of the report. These reports will also include any letter agreements signed by counsel for the parties during this period of time. The revisions described in these letter agreements will be treated as modifications of the Consent Decree and will be entered as orders of the Court. Modifications of the Consent Decree are enforceable by the Court.

7. MONITORING AND ENFORCEMENT OF THE CONSENT DECREE

7.1 The parties will meet a minimum of twice each year throughout the term of the Consent Decree, beginning in October 2005 and March 2006 and continuing thereafter, at dates and times selected by the parties. Each party may also request up to two additional meetings each year.

7.2 In addition to the required meetings described in Paragraph 7.1, TEA will provide relevant documents to Plaintiffs on a quarterly basis, beginning on October 1, 2005, and continuing throughout the term of the Consent Decree. These documents will not include personally identifiable student data. TEA will provide the following documents in the quarter that each document becomes available:

(a) Data establishing the total number of RF students eligible for special education services;

(b) Data establishing the total number and identity of all school districts, including charter schools, serving RF students;

(c) A list of all RF districts categorized by the size of the RF student population, as described in Paragraph 3.3(d);

(d) A list of all staff hired or retained to conduct RF monitoring and a description of their job responsibilities;

(e) Copies of all RF monitoring instructional products, professional development documents, and training materials;

(f) A description of components of the unique RF data collection system and an explanation of how it operates;

(g) A description of all triggers established for selection of RF districts to receive on-site monitoring;

(h) An annual list of all RF district scores on the RF performance indicators and the names of all RF districts selected for low-performing on-site monitoring visits, random on-site monitoring visits, and random data verification visits;

(i) A description of the benchmarks applied to RF districts and all underlying information and data used to establish these benchmarks;

7.3 Beginning with the 2006-2007 school year and continuing throughout the term of this Consent Decree, TEA will provide Plaintiffs with copies of all RF district monitoring reports, corrective action plans approved by TEA, the documents reflecting compliance with these corrective action plans, and all enforcement activities and imposition of sanctions for RF districts that fail to timely implement corrective action plans. TEA will provide the RF monitoring reports within 30 days of finalizing the reports, and will provide the corrective action plans within 30 days of approval by TEA. TEA will also provide documents showing the enforcement activities and sanctions within 30 days of the date such action is taken against an RF district.

7.4 TEA will send all documents and reports required by the Consent Decree or by an Order of the Court to:

Maureen O'Connell
Southern Disability Law Center
1307 Payne Ave.
Austin, Texas 78757

7.5 TEA will pay to Advocacy, Inc. the sum of $15,000 per year during the term of this Consent Decree, as payment for all expenses and costs incurred for monitoring Defendant's compliance with the Consent Decree. These annual payments will be made to Advocacy, Inc. in July of each of the following years -- 2006, 2007, 2008, 2009, and 2010. These annual payments will constitute full and final satisfaction of TEA's obligation regarding Plaintiffs' monitoring of implementation of the Consent Decree. Payment of these monitoring fees, however, does not preclude Plaintiffs from seeking fees and costs incurred in challenging TEA's compliance with the Consent Decree, subject to the dispute resolution process described in Section 8 of this Consent Decree.

8. COMPLIANCE DISPUTES ARISING UNDER THE CONSENT DECREE

8.1 In the event that one party believes that the other has failed to substantially comply with any provision of this Consent Decree, the party alleging noncompliance will notify counsel for the other party in writing. This notice will identify the specific term(s) of the Consent Decree with which the party allegedly has failed to comply and the reason(s) for this allegation. Such notice will also propose dates for a meeting to discuss the allegation(s) of noncompliance.

8.2 The parties will meet within 30 days of the notice of alleged noncompliance in an attempt to resolve the matter. At this meeting, the party receiving notice of alleged noncompliance will state whether he or she agrees with the allegation, the basis for agreement or disagreement, and when appropriate, the steps proposed to remedy the alleged noncompliance within a specific time frame.

8.3 If unable to informally resolve an allegation of noncompliance, the parties will enter into formal mediation with a mediator from the U.S. Court of Appeals for the Fifth Circuit, Appellate Conference Program, or if such mediator is unavailable, with a mutually-selected mediator, within 30 days of the informal meeting described in Paragraph 8.2. If the parties are unable to resolve the dispute through mediation, the party alleging noncompliance may seek a resolution of the dispute in the United States District Court for the Western District of Texas.

8.4 The parties agree that if an allegation of noncompliance arises between April and June 2010, the party alleging noncompliance is under no obligation to engage in formal mediation prior to seeking enforcement of the Consent Decree in the United States District Court for the Western District of Texas.

9. ATTORNEYS' FEES, EXPENSES, AND COSTS

9.1 Plaintiffs have incurred attorneys' fees, expenses, and costs in pursuing this litigation. To settle this matter, and without admitting any liability, Defendant agrees to reimburse Plaintiffs $400,000.00 to settle all claims regarding fees, expenses and costs incurred by Plaintiffs and/or their counsel. Upon receipt from the Comptroller, Defendant will promptly deliver the check, made payable to Advocacy, Inc. to the office of Advocacy, Inc., 7800 Shoal Creek Blvd., Suite 171-E, Austin, Texas 78757.

10. RETENTION OF JURISDICTION AND ENFORCEMENT OF THE CONSENT DECREE

10.1 It is the intention of the parties that the Consent Decree be entered as an Order of the Court, and that the U.S. District Court for the Western District of Texas retain exclusive jurisdiction over all matters relating to enforcement of the Consent Decree.

10.2 Advocacy, Incorporated or the Southern Disability Law Center may seek enforcement of this Consent Decree in the U.S. District Court for the Western District of Texas on behalf of RF students, if done in conformity with the dispute resolution provisions of Section 8, and in conformity with the time periods referenced in Section 19.

10.3 Failure by a party to enforce any provision of this Consent Decree will not be construed as a waiver of the party's right to enforce other provisions of the Consent Decree.

11. ENTIRE AGREEMENT BETWEEN THE PARTIES

11.1 Plaintiffs and Defendant expressly acknowledge and agree that the terms of this Consent Decree are contractual and not merely recitals, and that the terms, conditions, and provisions of the Consent Decree are for the sole purpose of compromising disputed claims, avoiding further litigation, and buying peace, and that no payments made hereunder, nor releases or other consideration given hereunder, shall be construed as an admission of liability by or on behalf of either the Plaintiffs or Defendant, all such liability being expressly denied. Plaintiffs and Defendant expressly acknowledge and agree that this Consent Decree contains the entire agreement between them, and supersedes any and all prior agreements, arrangements, or understanding between the parties relating to Plaintiffs' special education monitoring claims.

12. CONSENT DECREE BINDING ON THE PARTIES AND SUCCESSORS IN INTEREST

12.1 Plaintiffs and Defendant expressly acknowledge and agree that this Consent Decree is binding upon and inures to the benefit of Plaintiffs' and Defendant's respective successors, assigns, heirs, agents, representatives, employees, and employers. Each party has a duty to so inform any such principal, agent, administrator, representative, successor or assign.

13. RELEASE OF CLAIMS

13.1 In exchange for the consideration described within the Consent Decree, Plaintiffs agree to and fully discharge Defendant and Defendant's employees, agents, and representatives thereof, of all claims, demands, and causes of action Plaintiffs now have, or may have had, against

Defendant, that are directly or indirectly related to, or arising from, any of the events and actions that form the basis of this litigation. This release does not preclude Plaintiffs from seeking to enforce the Defendant's obligations, as described within this Consent Decree.

14. WARRANTY OF NON-ASSIGNMENT

14.1 Plaintiffs and Defendant warrant and represent that none of them has sold, assigned, granted, or otherwise transferred to anyone not a party to this Consent Decree any right, privilege or cause of action, or any part thereof, covered by the terms of this Consent Decree.

15. MODIFICATION OF THE CONSENT DECREE

15.1 The parties acknowledge that the need to modify TEA's RF monitoring system may arise following the RF study conducted during the 2005-2006 school year or during the development and implementation phase of the monitoring system. In the event that such modifications are needed, the parties will meet to mutually agree upon the necessary changes. Any changes to the RF monitoring system agreed to by the parties will be made a part of a letter agreement signed by counsel for the parties.

15.2 In addition to the modifications described in Paragraph 15.1, all time periods specified in this Consent Decree may be extended by mutual agreement. Such changes also will be made part of a letter agreement signed by counsel for the parties.

16. SEVERABILITY

16.1 To the extent that any provision of this Consent Decree is held to be invalid or unenforceable, such provision will be severed from the remainder of the Consent Decree and the Consent Decree will be construed as if the invalid or unenforceable provision did not exist.

17. COUNTERPARTS

17.1 Plaintiffs and Defendant expressly acknowledge and agree that this Consent Decree may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

18. SIGNATORIES TO THE CONSENT DECREE

18.1 All undersigned counsel of record for the parties have the authority to enter into and execute this Consent Decree on behalf of their clients.

19. TERM OF THE CONSENT DECREE

19.1 This Consent Decree is effective as of the date of the Court's entry of the Decree. The Consent Decree will automatically expire by its own terms on December 31, 2010, unless one or both parties file a motion on or before July 1, 2010, requesting the Court to extend the term of the Consent Decree, and the Court grants this motion prior to December 31, 2010.

SIGNED on the dates indicated below:

MAUREEN O'CONNELL
Texas Bar No. 00795949

Date: 7-25-05

JAMES COMSTOCK-GALAGAN
Texas Bar No. 04653400

SOUTHERN DISABILITY LAW CENTER
1307 Payne Avenue
Austin, Texas 78757
(512) 458-5800

BRIAN EAST
Texas Bar No. 04653400
ADVOCACY, INC.
7800 Shoal Creek Blvd., Suite 171-E
Austin, Texas 78757
(512) 454-4816

Date: 7/25/05

ATTORNEYS FOR PLAINTIFFS

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Chief, General Litigation Division

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Texas Bar No. 20094700
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 463-2120

Date: 7-29-05

ATTORNEYS FOR DEFENDANT

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

DATED: 8/8/05

BY: ____________________
WALTER S. SMITH
UNITED STATES DISTRICT JUDGE